

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

UNITED STATES RUBBER COMPANY, LTD.

Claim No. **CU** -3074

Decision No. **CU** 4071

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant: Arthur, Dry, Kalish, Taylor & Wood
By Alan R. Elton, Esq.

Appeal and Objections from a Proposed Decision entered on
October 15, 1969.

Hearing on the record held on November 14, 1969.

FINAL DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by UNITED STATES RUBBER COMPANY, LTD., in the amount of \$9,203,371.70 based upon the asserted nationalization of its tire and footwear plant at Loma de Tierra in Cuba by the Government of that country.

By Proposed Decision dated October 15, 1969, claimant's loss was certified in the amount of \$9,499,960.92 for the nationalization of its tire and footwear plant at Loma de Tierra in Cuba by the Government of Cuba. In its Proposed Decision of October 15, 1969, the Commission held that since claimant owed taxes to the Government of Cuba in the amount of \$23,931.00, such sum should be eliminated in arriving at the amount of loss.

Claimant filed objections to the Proposed Decision of October 15, 1969, and argues that the amount of \$23,931.00 is erroneously referred to by the Commission as taxes owed to the Government of Cuba. It states that this amount was for taxes owed to the Government of the United States.

Claimant also submitted a copy of the pertinent page of its accounting regulations which shows that account No. 65.22 listing the amount of \$23,931.00 as an account payable was designated for the purpose of accruing United States federal income taxes.

Pursuant to claimant's objections to the Proposed Decision of October 15, 1969, the matter has been reconsidered and on the basis of the new evidence submitted the Commission now finds as follows:

The federal income taxes in the amount of \$23,931.00 were owed by the claimant corporation to the Government of the United States. The amount of \$23,931.00, not being owed to the Government of Cuba, cannot be used to set-off a portion of the obligation incurred by the Government of Cuba by the nationalization of claimant's property in Cuba. Accordingly, the Commission concludes that claimant's loss should not be reduced by the amount of \$23,931.00, and finds that claimant's loss caused by the nationalization of its tire and footwear plant at Loma de Tierra in Cuba amounted to \$9,499,960.92 plus \$23,931.00 or to a total of \$9,523,891.92.

In view of the foregoing, it is

ORDERED that the Proposed Decision of October 15, 1969, be amended in accordance with the foregoing, and in all other respects it is affirmed.

The certification of loss is restated as follows:

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CERTIFICATION OF LOSS

The Commission certifies that the UNITED STATES RUBBER COMPANY, LTD., sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Million Five Hundred Twenty-three Thousand Eight Hundred Ninety-One Dollars and Ninety-two Cents (\$9,523,891.92) with interest thereon at 6% per annum from August 30, 1960, to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

NOV 26 1963

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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OF THE UNITED STATES
WASHINGTON, D.C. 20579

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Claim No. CU-3074

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Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Arthur, Dry, Kalish, Taylor & Wood
by Alan R. Elton, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by UNITED STATES RUBBER COMPANY, LTD., in the amount of \$9,203,371.70 based upon the asserted nationalization of its tire and footwear plant at Loma de Tierra in Cuba by the Government of that country.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in the State of Delaware. The record shows that at all times pertinent to this claim, all of the outstanding capital stock of the claimant has been owned by Uniroyal, Inc. The record further shows that Uniroyal, Inc. was incorporated in New Jersey and that 1.4 percent of its stockholder interest is held by nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record shows and the Commission finds that claimant, the UNITED STATES RUBBER COMPANY, LTD., owned and operated a tire and footwear plant at Loma de Tierra, Termino de Santos Maria del Rosario, Havana, Cuba.

Claimant's property in Cuba was intervened by the Government of Cuba on August 30, 1960, by Resolution 19008, pursuant to Law 647 of 1959. Thereafter, on October 24, 1960, the Government of Cuba published in its Official Gazette Resolution No. 3 (pursuant to Cuban Law No. 851), which listed the claimant as nationalized. In view of such facts, the Commission finds that the assets of claimant's plant at Loma de Tierra were intervened and taken by the Government of Cuba on August 30, 1960, within the meaning of Title V of the Act.

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The record includes copies of balance sheets for the plant at Loma de Tierra, a photograph of the plant, a notarized statement concerning claimant's real property at Loma de Tierra used for the plant, and a microfilm record of claimant's equipment located in Cuba.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The claimant uses the December 31, 1960, balance sheet as the basis of its valuation.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is shown in the balance sheet of August 31, 1960, that date being the closest to August 30, 1960, the date when the plant in question was intervened by the Government of Cuba. The balance sheet of August 31, 1960, reflects the value of the assets of the plant in United States dollars as follows:

A S S E T S

Cash	\$ 1,418,482.15
Accounts Receivable, Customers	2,144,103.84
Accounts Receivable, Miscellaneous	33,581.52
Accounts Receivable, Employees	12,580.51
Accounts Receivable, Affiliated Companies	409,999.78
Accounts Receivable, International Good Service Corp., S.A.	146,892.89
Finished Goods	1,111,577.38
Goods in Process	166,337.35
Raw Materials	887,305.47
Supplies	105,620.14
Miscellaneous Goods in Process	7,825.22
Investments	8,642.00
Properties, Plants & Equipment	3,704,352.91
Prepaid and Deferred Charges	44,326.41
Total Assets	\$10,201,627.57

L I A B I L I T I E S

Accounts Payable	\$ 145,547.12
Federal Income Taxes	23,931.00
Other Accrued Taxes	267,735.87
Other Accrued Liabilities	125,007.56
Accounts Payable Inter Co.	8,887,007.05
Insurance Reserves	4,689.38
Reserve for Foreign Activities	213,643.44
Total Liabilities	\$ 9,667,561.42

Capital Stock	\$ 600,000
Earned Surplus	(65,933.85)
Net Worth	\$ 534,066.15
Total	\$10,201,627.57

It is noted that claimant is a United States corporation and the claim is for the intervention of its assets in Cuba and not for the taking of a Cuban corporation. The claimant is therefore entitled to recover in full for the intervention of its Cuban assets less the value of set-offs such as taxes due to the Government of Cuba. (See Claim of Simmons Company, Claim No. CU-2303.) Of course, the claimant as a United States company usually would be liable for the obligations contracted through its branch in Cuba even though the assets owned in Cuba are no longer available.

The balance sheet of August 31, 1960, shows that claimant owed taxes to the Government of Cuba in the amounts of \$23,931.00 and \$267,735.87 and has also included in its assets the amount of \$409,999.78 which appears to

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the Commission was due from non-Cuban affiliates. These sums should all be eliminated to arrive at the amount of loss. Accordingly, the Commission concludes that the amount of claimant's losses within the meaning of Title V of the Act was \$10,201,627.57 minus \$701,666.65, or \$9,499,960.92 as of August 30, 1960.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by the claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

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CERTIFICATION OF LOSS

The Commission certifies that the UNITED STATES RUBBER COMPANY, LTD. sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Million Four Hundred Ninety-nine Thousand Nine Hundred Sixty Dollars and Ninety-two Cents (\$9,499,960.92) with interest thereon at 6% per annum from August 30, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 15 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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